United States Court of Appeals

for the Second Circuit

APPENDIX

Orig w/affidavit of mailing

76-2129

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-2129

VASSILIOS LULOS,

Petitioner-Appellant,

—against—

DISTRICT DIRECTOR OF THE IMMIGRATION AND NATURALIZATION SERVICE, NEW YORK, NEW YORK, or any other person having the said Petitioner-Appellant in custody,

Respondents-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

APPELLEES' APPENDIX

DAVID G. TRAGER,
United States Attorney,
Eastern District of New York

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

A 1
No.

ORDER TO SHOW CAUSE, NOTICE OF HEARING, AND WARRANT FOR ARREST OF ALIEN

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

UNITED STATES OF AMERICA:

File No. A15 761 981

In the Matter of Vassilios LOULOS

Respondent

317 Wendover Avenue, Vienna, Virginia
Address (number, street, city, state, and ZIP code)

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

1. You are not a citizen or national of the United States;
2. You are a native of Greece and a citizen of Greece;
3. You entered the United States at New York, N.Y. on or about January 18, 1970 (date);
4. At that time you were admitted as a crewman on the "THIO THANNASIS" and authorized to remain in the United States for a period of time, not to exceed 29 days, during which the "THIO THANNASIS" remained in port;
5. You have remained in the United States beyond 29 days, without authority of the United States Immigration and Naturalization Service;

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

Section 241(a)(2) of the Immigration and Nationality Act, in that, after admission as a nonimmigrant under Section 101(a)(15) of said Act, you have remained in the United States for a longer time than permitted.

WHEREFORE, YOU ARE ORDERED to appear for hearing before an Immigration Judge of the Immigration and Naturalization Service of the United States Department of Justice at Room 700 1025 Vermont Avenue, N.W., Washington, D. C. 20538

on June 30, 1975 at 9:30 a.m. and show cause why you should not be deported from the United States on the charge(s) set forth above.

WARRANT FOR ARREST OF ALIEN

By virtue of the authority vested in me by the immigration laws of the United States and the regulations issued pursuant thereto, I have commanded that you be taken into custody for proceedings thereafter in accordance with the applicable provisions of the immigration laws and regulations, and this order shall serve as a warrant to any Immigration Officer to take you into custody. The conditions for your detention or release are set on the reverse hereof.

Dated: June 19, 1975

for District Director
(signature and title of issuing officer)

Washington, D. C. 20538
(City and State)

Exh 1

CAS

Form I-221S (12-1-73) (over)

NOTICE TO RESPONDENT

A 2

ANY STATEMENT YOU MAKE MAY BE USED AGAINST YOU IN DEPORTATION PROCEEDINGS

THE COPY OF THIS ORDER SERVED UPON YOU IS EVIDENCE OF YOUR ALIEN REGISTRATION WHILE YOU ARE UNDER DEPORTATION PROCEEDINGS. THE LAW REQUIRES THAT IT BE CARRIED WITH YOU AT ALL TIMES

If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Immigration and Naturalization Service. You should bring with you any affidavits or other documents which you desire to have considered in connection with your case. If any document is in a foreign language, you should bring the original and certified translation thereof. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Order to Show Cause and that you are deportable on the charges set forth therein. You will have an opportunity to present evidence on your own behalf, to the receipt of evidence and to cross examine any witnesses presented by the Government. Failure to attend the hearing at the time and place designated hereon may result in a determination being made by the Immigration Judge in your absence.

You will be advised by the Immigration Judge, before whom you appear, of any relief from deportation, including the privilege of departing voluntarily, for which you may appear eligible. You will be given a reasonable opportunity to make any such application to the Immigration Judge.

NOTICE OF CUSTODY DETERMINATION

Pursuant to the authority of Part 242.2, Title 8, Code of Federal Regulations, the authorized officer has determined that pending a final determination of deportability in your case, and, in the event you are ordered deported, until your departure from the United States is effected, but not to exceed six months from the date of the final order of deportation under administrative processes, or from the date of the final order of the court, if judicial review is had, you shall be:

☐ Detained in the custody of this Service ☐ Released on recognizance

☒ Released under bond in the amount of $1,000

You may request the Immigration Judge to redetermine this decision.

REQUEST FOR PROMPT HEARING

To expedite determination of my case, I request an immediate hearing, and waive any right I may have to more extended notice.

☐ I do ☐ do not request a redetermination by an Immigration Judge of the custody decision.

(signature of respondent)

Before:

(signature and title of witnessing officer) (date)

CERTIFICATE OF SERVICE

Served by me at WASHINGTON, DC on 6/19 1975 at 12:30 pm.

In person

Stephen Roberts, IA

(signature and title of employee or officer)

File No. A 15 761 981 A 3

UNITED STATES OF AMERICA:

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

In the Matter of

Vassilios LOULOS

Respondent.

In Deportation Proceedings Under Section 242 of the Immigration and Nationality Act

DECISION OF THE IMMIGRATION JUDGE

Upon the basis of respondent's admissions I have determined that he is deportable on the charge(s) in the Order to Show Cause.

Respondent has made application solely for voluntary departure in lieu of deportation.

ORDER: It is ordered that in lieu of an order of ~~deportation~~ respondent be granted voluntary departure without expense to the Government on or before OCT 15 1975 (Date)

or any extension beyond such date as may be granted by the district director, and under such conditions as the district director shall direct.

IT IS FURTHER ORDERED that if respondent fails to depart when and as required, the privilege of voluntary departure shall be withdrawn without further notice or proceedings and the following order shall thereupon become immediately effective: respondent shall be deported from the United States to Greece on the charge(s) contained in the Order to Show Cause.

IT IS FURTHER ORDERED that if the aforenamed country advises the Attorney General that it is unwilling to accept the respondent into its territory or fails to advise the Attorney General within three months following original inquiry whether it will or will not accept respondent into its territory, the respondent shall be deported to — —

Copy of this decision has been served on respondent.

Appeal: Waived-~~reserved~~

Date: Aug 18, 1975

Place: Wash DC

H Bookford
(Immigration Judge)

FORM I-39
(REV. 5-1-73)N

A 4

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
1025 Vermont Avenue, N.W.
Washington, D. C. 20538

PLEASE REFER TO THIS FILE NUMBER

A15 761 981

May 19, 1976

Vassilios Loulos
317 Wendover Avenue
Vienna, Virginia

DOCKET NOTED
BU 6-30-76

Please note the below checked action which has been taken in your case.

☐ You have violated the terms of your admission as a nonimmigrant. Consequently, permission previously granted you to remain in the United States is rescinded. You are required to depart from the United States at your own expense on or before _____.

☐ In accordance with a decision made in your case you are required to depart from the United States at your own expense on or before _____.

☒ Your application for an extension of time in which to depart from the United States has been GRANTED. You are required to depart on or before May 30, 1976.

You must notify this office, Room No. 702, on or before May 24, 1976 of the arrangements you have made to effect your departure, including the date, place, and manner.

Failure to depart on or before the specified date may result in the withdrawal of voluntary departure and action being taken to effect your deportation.

If there is a bond outstanding in your case, you are warned that to expedite cancellation of the bond and return of the collateral posted, you must make advance arrangements with this office to have your departure witnessed by an officer of this Service.

USE THE ENCLOSED SELF-ADDRESSED CARD TO NOTIFY THIS OFFICE REGARDING DEPARTURE ARRANGEMENTS. POSTAGE IS NOT REQUIRED. At the time of your departure, do not fail to surrender Form I-94, ARRIVAL-DEPARTURE RECORD, in accordance with instructions on that form.

cc: Jack Wasserman
1707 H Street, N.W.
Washington, D. C.

Very truly yours,

Edward K. Burns
Acting DISTRICT DIRECTOR

FOR IMMIGRATION AND NATURALIZATION USE ONLY

Departed:

Port _____ Date _____ ☐ I-94 stamped ☐ I-530 submitted
To _____ Via _____ ☐ I-181 prepared ☐ I-156 prepared

Form I-210
(Rev 9-1-70) N

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

John F. Kennedy International Airport
Jamaica, N.Y. 11430

A 5

DATE: 8/19/76

You, VASSILIOS LULOS (LOULOS)

have not established conclusively that you are admissible to the United States; therefore, YOU ARE ORDERED TO APPEAR IN PERSON AT THE BELOW INDICATED ADDRESS ON THE DATE AND AT THE TIME CITED. A final determination will be made then concerning whether and under what conditions you will be admitted into this country for the purpose you have indicated.

SUBJ IN DETENTION

Reporting Address:

U.S. IMMIGRATION AND NATURALIZATION SERVICE

[illegible]
[illegible] N.Y. 11007
[illegible] Station, 11th Floor

Reporting Date & Time

8/19/76

S.I.O. HEARING

FAILURE TO APPEAR AS ABOVE ORDERED MAY RESULT IN YOUR BEING TAKEN INTO CUSTODY BY AN OFFICER OF THIS SERVICE.

☒ Your passport has been retained. It will be returned to you in person when you report to the address indicated above.

STAPLE DUPLICATE OF FORM I-94 HERE

Specific Reason (s) for Deferral of Inspection:

☐ Documentary Deficiency: ☐ Passport ☐ Visa ☐ Form I-151

☒ Non-bonafide Nonimmigrant (See details below)

☐ For M/S Bond Posting (See details below)

DETAILS:

SUBJ ARR VIA PAA 542. SUBJ IS A DEPORTEE FROM COSTA RICA. SUBJ WAS TO RETURN TO GREECE. SUBJ REFUSED TO BOARD AIRCRAFT CLAIMING THAT HIS PASSPORT WAS EXPIRED. SUBJ DETAINED FOR REVALUATION OF PASSPORT AND COMPLETION OF INSPECTION. (See I-215)

☐ It is recommended that fine proceedings be instituted against

for failure to excerise due diligence in determining whether or not the above alien was in possession of a valid visa as required by Section 273(a).

8/19/76 (Date)

Peter Rile I.I. (Signature of Recommending Officer)

☒ Applicant Speaks English ☐ Applicant Speaks Only _____

ORM I-546 (REV. 6-1-73)Y

A 6

Family Name (Capital Letters)	First Name	Middle Initial	
LULOS (LOULOS)	VASSILIOS		L-420
Country of Citizenship	Passport or Alien Registration Number	Permit Number	
GREECE		833 90 16	

* United States Address (Number, Street, City and State)
317 WENDOVER AVE VIENNA VA 22180

** Airline and Flight No. or Vessel of Arrival	** Passenger Boarded at
DA 542	SAN JOSE

Number, Street, City, Province (State) and Country of Permanent Residence
EVICHON, LEVADIAS GREECE

Month, Day and Year of Birth
4/15/52

City, Province (State) and Country of Birth
GREECE

Visa Issued at (If no visa, insert ticket number)

STAPLE HERE

Month, Day and Year Visa Issued

PAROLED UNTIL AUG 18, 1976
PURPOSE I-259 SERVED
ON PAN I TO PRESENT
TO INS DETENTION
NYC 8/19/76 SG
Date

A NONIMMIGRANT ALIEN WHO ACCEPTS UNAUTHORIZED EMPLOYMENT IS SUBJECT TO DEPORTATION

Surrender this copy When Leaving The United States SEE REVERSE

FORM I-94

Form I-215W (3-27-67)

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

A 7

Page one of Two

RECORD OF SWORN STATEMENT IN AFFIDAVIT FORM

AFFIDAVIT-[redacted]

IN RE: VASSILIOS LULOS (LOULOS) FILE NO.

EXECUTED AT JFK-NYC DATE 8/19/76

Before the following officer of the U.S. Immigration and Naturalization Service: P. Riley II

in the ENGLISH language. Interpreter _____ used.

I, VASSILIOS LULOS (LOULOS), acknowledge that the above-named officer has identified himself to me as an officer of the United States Immigration and Naturalization Service authorized by law to administer oaths and take testimony in connection with the enforcement of the Immigration and Nationality laws of the United States. He has informed me that he desires to take my sworn statement regarding MY ADMISSION TO THE U.S.

He has told me that my statement must be made freely and voluntarily. I am willing to make such a statement. I swear that I will tell the truth, the whole truth, and nothing but the truth, so help me, God.

Being duly sworn, I make the following statement:

MY TRUE AND COMPLETE NAME IS VASSILIOS LULOS. I AM ALSO KNOWN AS VASSILIOS LOULOS. I WAS BORN ON 4/15/52 IN GREECE. I AM A GREEK CITIZEN. I AM NOT IN POSSESSION OF ANY VISA FOR THE US

I LAST ENTERED THE US JAN 1970 I ARRIVED AS A CREWMEMBER ON THE "THIOS THAMASIS." I LANDED AS A CREW MEMBER AND THEN STAYED UNTIL MAY 1976 WHEN I WENT TO COSTA RICA. WHILE HERE LAST TIME I INTENDED TO APPLY FOR PERMANENT RESIDENCE, BUT I WAS TOLD THAT

V L

GPO 921-833

Re VASSILIOS LULOS

Aug 19, 1936 A 8

JFKIA PAA

P. Riley II

V L

~~I~~ I WOULD HAVE TO APPLY FOR AN IMMIGRANT VISA AT AN AMERICAN CONSULATE ABROAD. I WENT TO COSTA RICA TO APPLY, BUT AFTER TWO AND ONE-HALF MONTHS I WAS DEPORTED FROM COSTA RICA. I WAS BROUGHT INTO THE US WITHOUT A VISA BY PAN AM FLIGHT 542. PAN AM WANTED ME TO GO ON TO GREECE AS A TRANSIT WITHOUT VISA. I CANNOT GO ONTO GREECE BECAUSE MY PROVISIONAL PASSPORT # 179 ISSUED IN WASHINGTON, D.C EXPIRED ON MAY 15, 1936 IF I HAD A VALID TRAVEL DOCUMENT I WOULD PROCEED TO GREECE. I UNDERSTAND THE ENGLISH LANGUAGE, AND I HAVE UNDERSTOOD ALL THE QUESTIONS ASKED ME IN THIS STATEMENT.

THE PRECEDING TWO PAGES HAVE BEEN READ TO ME IN THE ENGLISH LANGUAGE AND I FIND THEM TO BE TRUE AND CORRECT.

X Vassilios Lulos

SWORN AND SUBSCRIBED TO BEFORE ME THIS DATE Pat Riley II

A 9

UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

MATTER OF

FILE A- 22 126 158 - New York

VASSILIOS LOULOS

IN EXCLUSION PROCEEDINGS

-Applicant-

TRANSCRIPT OF HEARING

Before: Edward P. Emanuel, Immigration Judge

Date: August 24, 1976 Place: 20 West Broadway, New York, NY

Transcribed by Gwynne MacPherson Recorded by IBM

Official Interpreter

Language English

APPEARANCES:

For the Service:

John K. Speer, Esq.
Trial Attorney

Trial Attorney

Station

For the Respondent:

Wasserman, Orlow, Ginsberg & Rubin, Esqs.

233 Broadway

New York, NY 10007

By Robert Frank, Esq., of counsel

Form I-297
(Rev. 6-1-73)N

GPO

IMMIGRATION JUDGE TO APPLICANT

Q Sir, you speak and understand English don't you?

A Yes sir.

Q If there be any question or anything else in this proceeding you do not fully understand, let me know immediately and I will then explain those things to you. Do you understand?

A I understand.

Q What is your real name, please?

A My name is Loulos Vassilios.

Q Is your family name Loulos?

A Yes sir.

Q And is the gentleman seated at your left your lawyer in your Immigration case?

A Yes sir.

IMMIGRATION JUDGE: The attorney will kindly identify himself for the record.

MR. FRANK: My name is Robert Frank of the firm of Wasserman, Orlow, Ginsberg and Rubin.

IMMIGRATION JUDGE TO APPLICANT

Q Mr. Loulos, how old are you, please?

A 24 sir.

Q And does your lawyer, Mr. Frank, have your permission to speak for you in this, your immigration case, with the same result as though his words were your own words?

A Yes sir.

Q You have come to the United States but so far immigration would not

allow you to come into this country. Is that correct?

A That is correct sir.

Q This proceeding is to find out whether or not you should be allowed to come into the United States. Do you understand?

A I understand sir.

Q I show you this carbon of an original paper which had been given to you. ~~They're~~ We are using this carbon in your case and because it is the first paper we call this carbon official paper number one. Do you understand?

A Yes sir.

IMMIGRATION JUDGE: Let us go off the record.

OFF THE RECORD ON THE RECORD

IMMIGRATION JUDGE: While not recording it was learned and agreed that the applicant last arrived in the United States at the John F. Kennedy Airport, New York, N.Y., August 19, 1976, a passenger aboard Pan American Flight 542, boarded at San Jose, Costa Rica.

OFF THE RECORD ON THE RECORD

IMMIGRATION JUDGE: We are beckoned for a recess which is declared. During the recess applicant stated he believes his arrival was August 18th rather than the 19th. In any event, applicant was not admitted and yesterday was referred for determination of admissibility. It was established, while not recording, and agreed, that applicant is an alien, a native citizen of Greece, born April 15, 1952, that neither of his parents were ever citizens of the United States, that he, applicant, has never been admitted to the United States for permanent residence, that he did not present at last arrival a visa of any kind, nor a valid passport or travel document. It was additionally agreed

that applicant had been deported from Costa Rica to the United States. It was additionally agreed that his affidavit of August 19, 1976 be, and it is, received in evidence as Exhibit 2.

It was additionally established and agreed by both sides that applicant has no close family ties in the United States. The applicant indicates that he brought with him at last arrival in the United States $1,000 bank check payable to his order. The government, through the Trial Attorney, asked that we do not consider the public charge ground of excludability referred to in Exhibit 1 and we will not further consider that ground of excludability.

Respondent's counsel contends that, having been deported from Costa Rica and having, during the course of the deportation, been brought to the United States involuntarily, that his client is not now making an application to enter the United States. It is perhaps because of that that respondent's counsel has specifically declined to apply for a waiver of entry documentation, visa and a passport. We invite both sides, you Mr. Frank first and then you Mr. Speer, to acknowledge for the record the correctness of my assertions and favor us with information as to whether you feel there are any other salient facts not already recorded. Mr. Frank?

MR. FRANK: I agree with the assertions and facts as you have stated them and I would just like to present a legal argument after Mr. Speer concludes, ah...

IMMIGRATION JUDGE: Mr. Speer?

MR. SPEER: I agree to the statement of facts.

IMMIGRATION JUDGE: Mr. Frank, your legal argument will be received off the

record. We now are off the record.

OFF THE RECORD ON THE RECORD

IMMIGRATION JUDGE: We return to the record. Incidentally, we thank both sides for cooperation in facilitating this proceeding. It is appropriate that the record shows that applicant is relying on the following two cases. United States ex rel. Bradley Watkins, 163 F.2d 329 (2nd Cir. 1947) and United States ex rel. Sommer Kanap v. Zimmerman, 178 F.2d 645 (3rd Cir. 1949). The argumentation based on those two cases made by counsel is that, no Mr. Frank, I think you better succinctly state your own basis rather than I trying to state it for you, please.

MR. FRANK: Very good. As I indicated, those are not the two exclusive cases. There are others which are of similar import which I am also relying on, which I don't feel have to be cited at this point. Basically these cases indicate that an alien that is involuntarily brought to the United States should be given the right to depart voluntarily prior to any forceable deportation of the individual. In addition, the Bradley case indicates that an alien that is brought here involuntarily is not subject to the jurisdiction of an order of exclusion until he has been released from custody and given the opportunity to depart and as we have indicated, Mr. Loulos is not an applicant for entry here. He is present here involuntarily and what we are seeking is an opportunity for him to find a haven for him to depart to.

IMMIGRATION JUDGE: Mr. Speer, in fairness, is there anything you wish to say or present?

MR. SPEER: I have nothing to add.

IMMIGRATION JUDGE: On assumption that both sides are resting, we enter

our order. However, before so doing we must state what has been established.

OFF THE RECORD ON THE RECORD

NOTE: AT THIS POINT IN THE PROCEEDINGS THE IMMIGRATION JUDGE DELIVERED AN ORAL STATEMENT OF HIS DECISION IN THIS MATTER. THIS HAS BEEN TRANSCRIBED SEPARATELY AND IS ATTACHED.

IMMIGRATION JUDGE TO APPLICANT

Q Mr. Loulos, you have heard what I said. You may not have understood everything. I have ruled against what your lawyer has asked me to decide. I have ruled that you must be kept out of the United States. Do you understand?

A Yes sir.

IMMIGRATION JUDGE: Mr. Frank, what are your wishes as to appeal, please?

MR. FRANK: We wish to appeal.

IMMIGRATION JUDGE: Mr. Speer?

MR. SPEER: Appeal waived.

IMMIGRATION JUDGE: Mr. Frank...

MR. FRANK: I'd like two days to file...

OFF THE RECORD ON THE RECORD

IMMIGRATION JUDGE: I would assume that the appeal to be actually filed by August 26, 1976, it be deemed as having been made now. Here are the appeal forms in duplicate. The hearing is closed. Again I thank both sides for facilitating this proceeding.

I hereby certify that to the best of my knowledge the foregoing pages numbered 1 through 5 are a complete and accurate transcription of the above-described proceedings.

Virginia MacPherson
Signature

Transcriber
Title

TRANSCRIPT OF HEARING
United States Department of Justice — Immigration and Naturalization Service

FORM I-299
(Rev. 8-1-51)

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

File: A22 126 158 - New York

In the Matter of)

VASSILIOS LOULOS) IN EXCLUSION PROCEEDINGS

-Applicant-)

EXCLUDABLE: I&N Act - Section 212(a)(20) (8 USC 1182(a)(20)) - immigrant - no visa

APPLICATION: Release from custody with opportunity to depart voluntarily

IN BEHALF OF APPLICANT

Wasserman, Orlow, Ginsberg & Rubin, Esqs.
233 Broadway
New York, N.Y. 10007
Robert Frank, Esq., of counsel

IN BEHALF OF SERVICE

John K. Spear, Esq.
Trial Attorney

ORAL DECISION OF IMMIGRATION JUDGE ENTERED ON AUGUST 24, 1976

Applicant last arrived in the United States August 18 or 19, 1976 at the John F. Kennedy Airport, New York, N.Y., a passenger aboard Pan American Flight 542 boarded in Costa Rica. Applicant was not admitted and on August 23, 1976 was referred to an Immigration Judge for determination of admissibility.

Applicant, born April 15, 1952 in Greece, admittedly is an alien, a citizen of that country. He possesses no valid immigration documentation of any kind, neither a visa, passport, travel document nor has he ever been admitted to the United States for permanent residence. Applicant had, however, entered the United States in January 1970 as a crewman and assertedly

remained till May 1976 when he proceeded to Costa Rica hoping there to receive an immigrant visa from our foreign service officials in that country. After in Costa Rica two and a half months he was deported from that country and is now making his first return to the United States.

Applicant appears prima facie excludable from entry into the United States now as mandated by Section 212(a)(20) of the Immigration and Nationality Act.

Applicant has no close family ties in the United States. He seeks neither a visa nor a passport waiver contending that being deported from Costa Rica and coming here against his will he is now not seeking to make an entry. He urges, also through counsel, that now involuntarily here he should be given an opportunity to depart voluntarily before institution of these proceedings, in support of which counsel cites United States ex. rel. Bradley v. Watkins, 163 F.2d 328 (2nd Cir. 1947) and United States ex rel. Somar Kanan v. Zimmerman, 178 F.2d 645 (3rd Cir. 1949).

Our memory is dim. The cited cases are not immediately available. Without now being able to reveal respondent's contention by specific language we feel that the cases referred to by him are not applicable. We believe that both referred to situations where aliens in countries outside the United States. aliens deemed dangerous to this country, were brought to the United States involuntarily at our request or suggestion for safekeeping in the better security here available than abroad. The recesses of memory make us feel that the cited cases held that before such aliens could be deported it was necessary to afford them reasonable opportunity to leave this country

voluntarily after their presence of many years subsequent to having been brought here.

As already indicated it is believed the cited cases are not applicable. We are compelled to consider applicant before us, having arrived here not at the request of or for the convenience of the United States government, an applicant for admission to the United States. As such he is excludable under Section 212(a)(20) of the Immigration and Nationality Act.

ORDER: IT IS ORDERED that applicant be excluded and deported from the United States.

Edward P. Lamanel

EDWARD P. EMANUEL
Immigration Judge

BEFORE THE BOARD OF IMMIGRATION APPEALS

Oral Argument: Sept. 8, 1976

In Re: VASSILIOS LOULOS

File: A-22 126 158

Board: Mr. Milhollan and Miss Wilson

Heard: For Respondent: Jack Wasserman, Attorney
1707 "H" St., NW
Washington, DC 20006

For Immigration Service: George Indelicato,
Appellate Trial Attorney

Request: Termination

Attorney: May it please the Board, the alien appeals in this case from an order of exclusion. He is a 24-year old native of Greece, who arrived in the U.S. on Aug. 18, 1976, by air from Costa Rica, where he had been for some two and a half months. He was placed on board in flight to the U.S. against his will, and pursuant to an order of deportation, by the Costa Rican authorities. He is not an applicant for admission, and came here involuntarily. He made no entry, and our contention is the case should be in deportation proceedings.

You have a related issue but with a little different tone in the some hundred or more Vietnamese cases that I argued sometime ago, and which is still pending before the Board.

Mr. Milhollan: I think you argued there however, that an entry had been made, is that correct?

Attorney: Well.....

Mr. Milhollan: I understood you to say in this case no entry has been made.

Attorney: I applied it to the same cases because they did seek admission, they were applicants for admission in the Vietnamese cases, so there is that distinction, and there is the further distinction that they were brought here under the auspices of the U.S. Government flying military planes.

Now, you don't have that factor here.....

Mr. Milhollan: That is what I was getting at. Here you indicated that respondent has not made an entry, and yet you believe the proceedings should be in deportation proceedings.

Attorney: Yes, the World War II cases, Bradley v. Watkins and U.S. ex rel Sommerkamp v. Zimmerman, cited in the decision of the Immigration Judge, support that theory.

Miss Wilson: They were brought here by the U.S. Government though, weren't they?

Attorney: Some were brought by the U.S. Government and some were brought with the consent of the U.S. Government, but the Immigration Judge seems to have a dim memory, I guess he read those cases some 29 years ago, and didn't have the facilities to re-read them, and he felt that was the distinction, and that is why he did not apply them. But if his memory had been a little better, he would have remembered a related case, U.S. ex rel Paetau v. Watkins, 164 F. 2d,457, also a 2d Circuit case, which did involve a case of a German who came from Germany together with his family, and went to Guatemala, and Guatemala admitted the whole family except the husband and excluded him. He came to the U.S. pursuant to that deportation or exclusion order and the government made the argument that the other cases were distinguishable because they involved alien enemies, and the court should either overrule the cases or not follow the alien

enemy cases, and the court said this is the same situation, he came here involuntarily, and the whole purport of this whole line of cases is that you must give the alien an opportunity to depart, and then if he doesn't, he makes an entry and becomes deportable.

Now I don't understand what the logic of the Immigration Service is in this particular case, because I think they would be much better off in deportation proceedings. In exclusion proceedings he is deportable to the country whence he came, and he is supposed to be put on the same vessel or same accommodation back. The U.S. Government is not going to send him back to Costa Rica, and we will be stuck with him that way, whereas they can deport him to Greece if it is in deportation proceedings.

I might say the record doesn't say this, but he has filed documents for admission to the U.S., not in Costa Rica, they happen to be in the Dominican Republic, and he left the U.S. with the intent to get a visa before he came back, before he could get a visa he was deported against his will, and I think this is a clear case where he has not made an entry, where he is not an applicant for admission, and where he should not be handled in exclusion proceedings. I have nothing further to add.

Mr. Indelicato: Members of the Board, this particular party in this case in exclusion proceedings made an affidavit, and in his affidavit he stated: "I last entered the U S. January , 1970. I arrived as a crewmember on the "Thios Thamasis". I landed as a crewmember and then stayed until May, 1976 when I went to Costa Rica. While here last time I intended to apply for permanent residence, but I was told that I would have to apply for an immigrant visa at

an American consulate abroad. I went to Costa Rica to apply but after two and one-half months I was deported from Costa Rica. I was brought into the U.S. without a visa by Pan Am flight 542. Pan Am wanted me to go on to Greece as a transit without visa. I cannot go on to Greece because my provisional passport No. 179 issued in Washington, DC expired on May 15, 1976. If I had a valid travel document I would proceed to Greece. "

I want to emphasize this party was here in the U.S. voluntarily, before he proceeded to Costa Rica. It was his intention when he went to Costa Rica to get this immigrant visa and return back. When he got on that Pan Am plane he had a choice, he had a choice whether to go on to Greece or to come to the U.S. There is a claim that he is not an applicant for entry but it was his decision not to go on to Greece , where he came from, without documents, or to come to the U.S. without documents, and he chose to come to the U.S. without documents because he didn't proceed on that plane all the way to Greece.

All I hear is the thought that he may get a documentation, other immigrant visa, there is nothing here as to a question of not applying for waivers of documentation. I saw that somewhere in the record, that there was no application for waiver of documentation, nowhere do I see there is any attempt on the part of this respondent, this applicant, to apply for an extension of his passport. He could have done it in Costa Rica, he could have done it here in Washington, through counsel perhaps, and he has not done it.

It is the Service contention that this fellow is an applicant for admission, but if he is not an applicant for admission, he is one otherwise attempting to enter, because under section 291 of the Act, when they talk about the burden on the part of someone who is arriving in the U.S., it talks about an applicant for admission or otherwise attempting to enter. And it is the Service position that even if you should decide he is not an applicant for admission, he is one otherwise attempting to enter, and is properly in exclusion.

Attorney: Those of us in private practice understand the practical aspects of handling an Immigration case, and regrettably my learned opponent is not aware of one fact of life, which is that there is no Greek consul in Costa Rica, therefore he could not get any documents from the Greek authorities there. Fact No. 2, you will find that Pan Am Flight 542, which is the flight upon which he arrived, only went from Costa Rica to the U.S. That was its terminal point. It did not go on to Greece.

My associate takes the same flight occasionally, and it lands in Washington, but when it doesn't land in Washington, at Dulles, it will land in New York City. He was physically placed on board this flight, against his will; as a matter of fact he called me the day before and said he is being deported and what could he do, and there was nothing I could do. He was placed on board this flight and this flight was destined to the U.S. He had no free choice about getting on the flight. The authorities told him the day before he would be placed aboard the flight, and he came here. He did not intend to come here at this particular time, he did intend to come here whenver he obtained a permanent immigration visa, so he was there at this time, as an applicant for admission.

It was Pan Am that wanted him to go on as a transit without a visa, which he at that time did decline to do it. I submit that did not make him an applicant for admission, and that did not make an entry.

Mr. Milhollan: Thank you gentlemen.

mb - 9/8/76

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United States Department of Justice
Board of Immigration Appeals
Washington, D.C. 20530

SEP 16 1976

File: A22 126 158 - New York

In re: VASSILIOS LOULOS

IN EXCLUSION PROCEEDINGS

APPEAL

ON BEHALF OF APPLICANT: Jack Wasserman, Esq.
1707 "H" Street, N.W.
Washington, D.C. 20006

ON BEHALF OF I&N SERVICE: George Indelicato
Appellate Trial Attorney

ORAL ARGUMENT: September 8, 1976

EXCLUDABLE: Section 212(a)(20), I&N Act (8 U.S.C. 1182 (a)(20)) - Immigrant - not in possession of valid immigrant visa

APPLICATION: Termination of proceedings

The applicant is a 24-year-old alien, a native and citizen of Greece. He last arrived in the United States on August 18 or 19, 1976 at New York City. Inspection was deferred pursuant to section 235(b) of the Immigration and Nationality Act. A notice of hearing (Form I-122) (Ex. 1) was delivered to the applicant by the trial attorney on August 24, 1976. An exclusion hearing was held on August 24, 1976. Subsequent to that hearing, the immigration judge found the applicant excludable under section 212(a)(20) of the Act as an immigrant who was not in possession of a valid immigrant visa. The applicant has appealed from that decision. The appeal will be dismissed.

On August 19, 1976, the applicant made a sworn statement to the Service (Ex. 2). In his affidavit, the applicant stated that he was a native and citizen of Greece who was "not in possession of any visa for the U.S."; that he last entered the United States in January of 1970 as a crewman; that he remained in the United States until May of 1976; and that he then departed for Costa Rica. He indicated that he went to Costa Rica in order to obtain "an Emigrant visa from an American consulate abroad"; and that after two and one-half months in Costa Rica, the government of Costa Rica deported him to the United States. The applicant further stated that he arrived in the United States on a Pan American flight without a visa; and that the carrier desired that he proceed from the United States to Greece as an alien in transit without a visa. He indicated that he could not go to Greece because his passport had expired; but that he would have proceeded to Greece if he had a valid travel document.

At the hearing, the trial attorney and the applicant (through counsel) stipulated that the applicant last arrived in the United States at John F. Kennedy Airport located in New York City on August 18 or 19, 1976, as a passenger aboard Pan American Flight 542 after having boarded at San Jose, Costa Rica; and that the applicant was not admitted to the United States. The parties also stipulated that the applicant was born in Greece on April 15, 1952; that he is a citizen of Greece; that neither of his parents was ever citizens of the United States; that the applicant had never been admitted to the United States as a permanent resident alien; and that at the time of his last arrival, the applicant did not present a visa, passport or travel document. Both parties further agreed that the applicant was deported from Costa Rica to the United States, and that the applicant has no close family ties in the United States. The immigration judge noted that, upon arrival in the United States, the applicant indicated that he had a $1,000 bank check made out to his order. Upon the request of the trial attorney and counsel for the applicant, the immigration judge announced that he would not consider the allegation contained in the notice of hearing (Ex. 1) to the effect that the applicant is likely to become a public charge.

Counsel contended at the hearing that the applicant was brought to the United States involuntarily by virtue of his deportation by the government of Costa Rica; and that the applicant is not now applying for admission to the United States. The immigration judge noted that counsel for the applicant specifically declined to apply for a waiver of entry documentation, visa and passport. Counsel further contends that an alien who is involuntarily brought to the United States should be released from custody and be allowed to depart the United States voluntarily. At oral argument, counsel maintained that the applicant did not make an entry into the United States; that the applicant was not applying for admission to the United States; that he was brought to the United States involuntarily; and that an exclusion proceeding is inappropriate. Counsel admits that the applicant must be given the opportunity to depart the United States voluntarily, and if he fails to do so, then it would be appropriate for the government to commence deportation proceedings.

Counsel contends that the applicant did not effect an entry into the United States within the meaning of section 101(a)(13) of the Act. An alien does not effect an entry into the United States unless, while free from actual or constructive restraint, he crosses into the territorial limits of the United States and is inspected and admitted by an immigration officer or actually or intentionally evades inspection at the nearest inspection point. Matter of Pierre et al., Interim Decision 2238 (BIA 1973). In this case, the applicant's entry into the United States (upon his arrival in New York City) was thwarted during an inspection by an immigration officer when the applicant was unable to produce a valid unexpired immigrant visa. We find that the applicant was not admitted, and, therefore, did not effect an "entry" into this country.

In support of his contention that the applicant must be given the opportunity to voluntarily depart from the United States, counsel cites United States ex rel. Bradley v. Watkins, 163 F.2d 328 (2 Cir. 1947); United States ex rel. Ebeling v. Watkins, 164 F.2d 457 (2 Cir. 1947); and United States ex rel. Somersamp v. Zimmerman, 178 F.2d 645 (3 Cir. 1949). In the Bradley case (a habeas corpus proceeding), the court held that an alien seized by the United States Navy in Greenland, brought to the United States against his will, and interned as an alien enemy for security reasons could not be deported as an "immigrant" — at least, not before

he had been afforded an opportunity to depart voluntarily. The theory of the Bradley decision is that an alien brought here by agents of the United States against his will is not an "immigrant" within the meaning of the immigration laws. In the Sommerkamp case, the facts related to an alien who was seized by the United States Army in Guatemala at the outbreak of World War II, and brought to the United States against his will and interned for security reasons. The alien's internment was subsequently terminated, and he was given the opportunity to depart voluntarily but he did not do so. In a habeas corpus proceeding, the court held that the subsequent presence of the alien in the United States was "voluntary", and therefore he had made an "entry" and was subject to deportation as an immigrant. In the Paetau case (also a habeas corpus proceeding), the facts related to an alien who was deported to Germany by Guatemalan authorities and placed on an airplane bound for the United States. The Guatemalan Government had requested other countries to permit the alien's passage to Germany. The alien, who applied for admission to the United States, was detained and ultimately held in deportation proceedings as an immigrant who had made an illegal entry. The court applied the rationale of the Bradley case, and held that it made no difference whether an alien is forcibly brought into this country directly by the United States authorities or whether such action is accomplished by a foreign government with the consent of the United States. The court was of the opinion that the United States authorities accepted the deportation of the alien from Guatemala, and supported that action when they took steps against the alien for his asserted illegal entry in order to insure his return to Germany. The deportation order was reversed, the writ was sustained, and the alien was released from the custody of the Service.

The rationale that has been consistently expressed by the courts is that an alien who is involuntarily brought to this country by agents of the United States is not considered to be an "immigrant" within the meaning of section 101(a)(15) of the Act. See also United States ex rel. Ludwig v. Watkins, 164 F.2d 456 (2 Cir. 1947). This rationale has been held to be applicable not only to a situation in which agents of the United States directly bring an alien into the United States against his will, but also to a situation in which United States authorities consent to

such an action by a foreign government. See United States ex rel. Faetau v. Watkins, supra. It is apparent that the holdings of these cases are predicated upon the direct participation of United States authorities in effecting the removal of an alien from another country to the United States against his will or upon the consent of United States authorities to such action by the government of a foreign country. We find that the case at hand is factually distinguishable from the above cited cases. The applicant was not brought to this country by agents of the United States against his will. Further, United States authorities did not expressly or impliedly consent to his deportation to the United States by the government of Costa Rica. We therefore conclude that the cases cited by counsel are inapplicable to this case.

Counsel's contention that Vassilios Loulos is not an applicant for admission is without merit. It is clearly implied in the applicant's present and past conduct that he is seeking admission to the United States. We find that the applicant resided in the United States unlawfully for more than six years before he voluntarily departed this country for Costa Rica in a improvident attempt to legalize his status by obtaining an immigrant visa. Further, we find that upon his arrival in the United States following his deportation from Costa Rica, the applicant had the freedom and the financial means to arrange for his transportation to Greece, his native country, but chose not to do so. Instead, he decided to remain in the United States. His statement that he did not go on to Greece because he did not possess an unexpired passport is curious since he also did not have proper documentation to enter the United States.

Section 214(b) of the Act provides that every alien shall be presumed to be an immigrant until he establishes to the satisfaction of the Service, at the time of application for admission, that he is entitled to nonimmigrant status.

At the time of his inspection, the applicant did not present any documentation which would entitle him to enter the United States. We conclude that an exclusion proceeding was the proper forum in this case.

We further conclude that the applicant failed to sustain his burden under section 214(b) of the Act. Therefore, he must be presumed to be an immigrant and is excludable under section 212(a)(20). Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

David L. Michelin

Chairman

CIS:ECB:ec
F. #762337

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- X

VASSILIOS LULOS,

Petitioner,

- against -

DISTRICT DIRECTOR OF THE IMMIGRATION AND NATURALIZATION SERVICE, NEW YORK, OR ANY OTHER PERSON HAVING THE SAID PETITIONER IN CUSTODY,

Respondents.

- X

AMENDED ORDER

Civil Action
No. 76 C 1732

An application for a Writ of Habeas Corpus having been made by the petitioner, and the Court having considered the papers submitted by the parties, and all prior proceedings had herein, and the parties having appeared for oral argument on the application on October 8, 1976, it is hereby

ORDERED (1) that the petition for a Writ of Habeas Corpus is denied and the petition dismissed; and it is further

ORDERED (2) that the stay granted by this Court on September 20, 1976 and thereafter extended until 4:00 p.m., October 8, 1976, enjoining and restraining respondent District Director of the Immigration and Naturalization Service, his agents, servants and employees from deporting petitioner is extended pending the completion by plaintiff of an expedited appeal of the preceding order to the U.S. Court of Appeals for the Second Circuit, provided, however, that such stay is conditioned upon (1) plaintiff filing a Notice of Appeal herein on or before October 13, 1976 and

(2) plaintiff making a motion in the Second Circuit for an expedited appeal (setting forth a briefing schedule agreeable to both counsel for plaintiff and counsel for defendant) within 10 days thereafter.

Dated: Brooklyn, New York
October 8, 1976

UNITED STATES DISTRICT JUDGE

Form No. USA-52a-4a
(Rev. 1-29-71)

AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK, ss:

EVELYN COHEN, being duly sworn, says that on the 29th day of November, 1976, I deposited in Mail Chute Drop for mailing in the U.S. Courthouse, Cadman Plaza East, Borough of Brooklyn, County of Kings, City and State of New York, a APPELLEES' APPENDIX of which the annexed is a true copy, contained in a securely enclosed postpaid wrapper directed to the person hereinafter named, at the place and address stated below:

Marion R. Ginsberg, Esq.
233 Broadway
New York, N.Y. 10007

Evelyn Cohen

Sworn to before me this
29th day of Nov. 1976

Carolyn M. Johnson

Qualified
Term Expires March 30, 77